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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/675,511      | 09/29/2000  | Ludwig Wolf JR.      | 112754-019          | 9637             |

7590 01/28/2003  
Bell Boyd & LLOYD LLC  
P O Box 1135  
Chicago, IL 60690-1135

EXAMINER

MARX, IRENE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1651

DATE MAILED: 01/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/675,511**Applicant(s)  
**Wolf et al.**Examiner  
**Irene Marx**Art Unit  
**1651**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Dec 19, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attachment

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

10. ☐ Other: \_\_\_\_\_

**IRENE MARX**  
**PRIMARY EXAMINER**  
**ART UNIT 1651**

The arguments after final filed 12/19/02 is acknowledged. Claims 28-30, 32, 34, 36, 38-51 are pending and are considered on the merits.

With respect to the obviousness-type double patenting over claims 1-8 of U.S. Patent No. 6,207,107 [A] it is noted that a terminal disclaimer will be filed upon notice of allowable subject matter in this application. In the absence of this document, the rejection is maintained.

Applicants persist in arguing that the definition of "body fluid" in the specification is correct in including blood components and internal organs. The dictionary of "fluid" is "n. A continuous, amorphous substance whose molecules move freely past one another and that has the tendency to assume the shape of its container; a liquid or gas". The definition does not include the container as part of the "fluid". Although the definition in the specification includes non-fluid cells and organs, applicants cannot define a term in opposition to a generally accepted definition to include an organ such as the brain. In re Hill 73 USPQ 482 (CCPA 1970).

With respect to "body fluid", amendment of the claim to recite "blood, or blood component" instead of "body fluid" would eliminate this argument.

Applicants argue that patent 4,608,178 clearly discloses sealed containers in its Optipak<sup>R</sup> system. However, as noted previously, it is not clear which portion of the patent is being referenced by applicants. Also it is unclear that this patent was incorporated by reference, but merely was used as an example.. In figure 2, touted as basis or support for "sealed", it is unclear which "container" is deemed sealed in the context of the claimed invention. For example, it may only required to be "closed", but not necessarily "sealed".

Regarding the art rejections, applicants' arguments appear to be correct regarding the rejection under 35 U.S.C §103 regarding the critical date of November 29, 1999. However, the argument is incorrect in that the present record fails to show or state that the instant application and the reference were **at time of invention** owned by the same assignee.

Applicants' arguments regarding the "port" aspect of the invention pertaining to the 35 U.S.C §102 rejection are noted. However, the intended feature touted is not clearly delineated in the as claimed invention.

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Therefore the rejections are deemed proper and are adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.



Irene Marx  
Primary Examiner  
Art Unit 1651